effect that the opinion of the House for enlarging the scope of the Bill will be noted by Government. The present amendment appears to be too wide. It will relate to every Kuri irrespective of whether it is run as a business or only to tide over a private financial need. Companies or private individuals who run Kuries as a "business" as distinguished from those Kuries which are run say, for the purposes of raising funds for a marriage or for any other domestic contingency alone need be further brought within the ambit of the Bill. Government must have time to consider that question by gathering statistics and if Government are satisfied that there is a case for further amendment, to the effect that every Kuri should be brought within the ambit of this Bill then I can hold out that Government themselves may introduce an amendment at the next meeting or soon after the investigation is over. Under these circumstances, I request the Hon'ble Member to withdraw his amendment.

Mr. C. V. Iyyu *(Kunnamkulam):* In the light of the position taken up by the Government I do not wish to press the motion now. But the explanation given by the Advocate-General is not very satisfactory. Because for the purpose of giving a daughter in marriage by a private individual the starting of a Kuri is rather a very dangerous concern. Marriage itself is becoming a menace to society especially in the matter of economics and economic concerns. So I request leave of the House to withdraw my motion.

Amendment, by leave, withdrawn.

Motion put and carried

The Cochin Employers' Liability Bill

Mr. C. J. Mathew *(Joint Secretary to Government):* I beg to move that the Cochin Employers' Liability Bill be taken up and finally passed.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried.

The Cochin Local Authorities Entertainments Tax Act (Amendment) Bill

Mr. C. J. Mathew *(Joint Secretary to Government):* I beg to move that the Cochin Local Authorities Entertainments Tax Act (Amendment) Bill be taken up and finally passed.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried.

The Cochin Workmen's Compensation Act (Amendment) Bill

Mr. M. Sivarama Menon *(Advocte-General):* I beg to move that the Cochin Workmen's Compensation Act (Amendment) Bill may be taken up and finally passed.

Mr. T. A. Ramachandra Ayyar *(Nellayi):* I second it.

Motion put and carried.

The Cochin Panchayat Bill

Mr. President: Cochin Panchayat Bill.

Mr. V. K. Bhaskara Menon *(Cranganur):* Before we proceed further with the discussion I would like to move that since there are so many amendments at short notice the further consideration of the Bill may be had at the next meeting. Some of the amendments are of far reaching consequence. Since we have not been given sufficient time it will be unfair both to the Council and to the members, I move that the further consideration of the Bill may be postponed to Makaram meeting.

Mr. Joseph Petta *(Adur):* I second it.

Mr. T. K. Nayar *(Minister for Rural Development):* I agree.

Motion put and carried.

The Cochin Arbitration Bill

Mr. M. Sivarama Menon *(Advocate-General):* I beg to move that the Cochin Arbitration Bill be read in Council.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I second it.

Motion put and carried.

Mr. M. Sivarama Menon *(Advocate-General):* The Arbitration Act which is now in force in Cochin was passed in the year 1108. That Act was based on the Indian Arbitration Act of 1899. Subsequent to that in the year 1940 the Indian Arbitration Act has undergone very radical changes and that was the result of the Enquiry Report of a special Civil Justice Committee appointed by the Government of India to go into the question of reforming the law of arbitration and a special officer was also appointed to review the report. In accordance with

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the recommendation of the special officer the Arbitration Act of 1899 was repealed and the Indian Arbitration Act now in force was enacted. The present attempt is to amend and consolidate the law relating to arbitration by bringing within its scope and ambit arbitrations either through courts or otherwise. From the order paper Hon'ble Members will find that the original intention of the Government was to move for a suspension of the standing order and move for a consideration of the Bill if leave to do so it is granted. I do not propose to do so as I think that this Bill may be referred to a Select Commiltee. I am placing this information in advance so that the discussions may as far as possible be centred on the essential principles. Therefore I will not be moving for the suspension of the Standing Order and I will be moving that the Bill be referred to a Select Committee. The fundamental provisions in the Bill are very succinctly given in the notes. I do not think I need waste time over it. Hereafter when a matter is referred to arbitration there will be no scope for anybody to play any dodge. The Court has been given certain powers to eradicate latches. In order that the parties may not defeat the purpose of arbitration proceedings by alienating the properties power has been given to the Court to pass such interim orders as are necessary for the purpose of doing justice. In fact the provisions of the Indian Arbitration Act appear to be very wholesome and it is a very well considered piece of legislation and I think it is up to us to follow it as far as possible. Regard being had to local conditions no change in principle is necessary. I request that the House may be pleased to support this motion for the Bill to be read in the Council.

Motion put and carried

Secretary to the Council: The title of the Bill is "The Cochin Arbitration Bill."

Mr. M. Sivarama Menon *(Advocate-General)* : I beg to move that the Cochin Arbitration Bill be referred to a Select Committee of this House composed of the mover and Messrs. T. P. Poulose, K. Narayana Menon, V. K. Bhaskara Menon, A. V. Moothedan, K. T. Achuthan and Ephraim Ouseph.

Mr. B. V. K. Menon *(Joint Secretary to Government)* : I second it.

Motion put and carried.

The Cochin Municipal Act (Amendment) Bill

Mr. C. J. Mathew *(Joint Secretary to Government)*: I beg to move that the Cochin Municipal Act (Amendment) Bill be read in Council. As matters now stand there is provision to appoint commissioners only in Municipalities with an income of above Rs. 75,000. But this restriction, is no longer considered necessary by Government in the interest of better and more efficient administration of the Municipalities. Of course, as is known to this House, the Hon'ble Member for Chittur brought a similar Bill in 1118, but it was opposed by the Government at that stage. Now subsequent events in certain Municipalities have however made the Government change their attitude. Therefore it is now sought to be introduced as a Government measure. It is only a permissive Bill enabling the Government whenever found necessary to appoint commissioners even in minor Municipalities irrespective of their income. Being a non-controversial measure I request the House to kindly accept the motion.

Mr. C. V. Iyyu *(Kunnamkulam)*: I second it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)* : Mr. President.—The Cochin Municipal Act is the resultant of the Cochin Municipal Bill that was discussed by the predecessor of this present Council, that is, by the fourth Council during the closing days of its life. A special session, not exactly a session, but, two special days were allotted, during the Budget Session, I believe, in Karkadagam 1111 for the consideration of the Bill modelled on the lines of the Madras Act. That was in 1937 August. The present amendment that is sought in effect though not word for word, was there as section 13. A debate upon that section conducted by the Hon'ble Members who had studied the implications of that section in their thoroughness made out a case to establish the undesireability of having commissioners for any Municipality, whatever its income. That was the case established by the progressive section of the Council. This statement of mine will be borne out from a perusal of the discussion in August 1937. The existing Act which resulted from that Bill contains section 13 in a form modified from section 13 that was in the Bill originally sponsored. The modification, Sir, is that only Municipalities having an income of Rs. 75,000 a year need have a Commissioner. Years rolled on. An Hon'ble Member with long, long experience of Municipal Council life, not only as a member of the Council but as Chairman thereof by the time he reached the year 1118, came forward in this very house with the proposition as stated by the Hon'ble Mover of the Amendment Bill, similar to the amending Bill that is moved by the Government. That move, on the part of the said veteran member he

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APPENDIX IV

(Please see answer to Question No. 87)

Copy of the remarks

The excellent tuberculosis clinic also impressed me very favourably as a therapeutic institution, but the absence of health visitors places a regreatable limit on its functions. The working of the institution is good and all branches of clinic activities are in evidence. It is hoped that it will soon be possible to repair and replace the thoracoscopy set, the need for which was obvious from the skiagrams seen.

APPENDIX V

THE COCHIN ARBITRATION BILL

WHEREAS it is expedient to consolidate and amend the law relating to arbitration in Cochin State; it is hereby enacted as follows.—

CHAPTER I

Introductory

1. *Short title, extent and commencement.*—(1) This Act may be called the Cochin Arbitration Act, of 11

(2) It extends to the whole of Cochin State.

(3) It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, appoint.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context.—

(*a*) "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

(*b*) "award" means an arbitration award;

(*c*) "court" means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Court of small causes.

(*d*) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party acts in a represntative character, the person on whom the estate devolves on the death of the party so acting;

(*e*) "reference" means a reference to Arbitration.

CHAPTER II

Arbitration without intervention of a Court

3. *Provisions implied in arbitration agreement.*—An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provision set out in the First Schedule in so far as they are applicable to the reference.

4. *Agreement that arbitrators be appointed by third party.*—The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

5. *Authority of appointed arbitrator or umpire irrecoverable except by leave of Court.*—The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

6. *Arbitration agreement not to be discharged by death of any party thereto.*—(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

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(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

7. *Provisions in case of insolvency.*—(1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewi th shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

8. *Power of Court to appoint arbitrator or umpire.*—(1) In any of the following cases—

(*a*) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties and all the parties do not, after differences have arisen, concur in the appointment or appointments; or

(*b*) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or

(*c*) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

9. *Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.*—Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

(*a*) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies: the party who appointed him may appoint a new arbitrator in his place;

(*b*) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment as sole arbitrator made under clause (*b*) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

Explanation.—The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

10. *Provisions as to appointment of three or more arbitrators.*—(1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

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(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

11. *Power to Court to remove arbitrators or umpire in certain circumstances.*—(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive an remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes; in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

12. *Power of Court where arbitrator is removed or his authority revoked.*—(1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or as a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

(*a*) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or

(*b*) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(3) A person, appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he has been appointed in accordance with the arbitration agreement.

13. *Powers of arbitrator.*—The arbitrators or umpire shall unless a different intention is expressed in the agreement, have power to—

(*a*) administer oath to the parties and witnesses appearing;

(*b*) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;

(*c*) make the award conditional or in the alternative.

(*d*) correct in an award any clerical mistake or error arising from any accidental slip or omission;

(*e*) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire. be necessary.

14. *Award to be signed and filed.*—(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it; together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (*b*) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

15. *Power of Court to modify award.*—The Court may by order modify or correct and award,—

(*a*) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

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(c) where the award contains a clerical mistake or an error arising from an accidental slip or ommission.

16. *Power to remit award.*—(1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit.

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court.

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

17. *Judgment in terms of award.*—Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

18. *Power of Court to pass interim orders.*—(1) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

19. *Power to supersede arbitration where award becomes void or is set aside.*—Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

CHAPTER III

Arbitration with intervention of a Court where there is no suit pending

20. *Application to file in Court arbitration agreement.*—(1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject, matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registerd as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

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CHAPTER IV

Arbitrator in suits

21. *Parties to suit may apply for order of reference.*—Where in any suit shall the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference.

22. *Appointment of arbitrator.*—The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

23. *Order of reference.*—(1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

24. *Reference to arbitration by some of the parties.*—Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with and in the manner provided by section 21, the Court may, if it thinks fit so refer such matters to arbitration (provided that the same can be separated from the rest of the subject matter of the suit, in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

25. *Provisions applicable to arbitrations under this Chapter.*—The provisions of the other Chapters shall, of far as they can be made applicable, apply to arbitration under this Chapter:

Provided that the Court may, in any of the circumstances mentioned in sections 8, 10, 11, and 12, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

CHAPTER V

General

26. *Application of Chapter.*—Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

27. *Power of arbitrators to make an interim award.*—(1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

28. *Power to Court only to enlarge time for making award.*—(1) The Court may, if it thinks fit whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all this parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

29. *Interest on awards.*—Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

30. *Grounds for setting aside award.*—An award shall not be set aside except on one or more of the following grounds, namely.—

(*a*) that an arbitrator or umpire has misconducted himself or the proceedings;

(*b*) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(*c*) that an award has been improperly procured or is otherwise invalid.

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31. *Jurisdiction.*—(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existance of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

32. *Bar to suit contesting arbitration agreement or award.*—Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

33. *Arbitration agreement or award to be contested by application.*—Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.

Provided that where the Court deems it just an expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

34. *Power to stay legal proceedings where there is an arbitration agreement.*—Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may at any time before filing a written statement or taking any other steps in the proceedings, apply to the Judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the propet conduct of the arbitration, such authority may make on order staying the proceedings.

35. *Effect of legal proceedings on arbitration.*—(1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

36. *Power of Court where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference.*—Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regerds that difference.

37. *Limitation.*—(1) All the proivsions of the Cochin Limitation Act, XII of 1112 shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an

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award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Cochin Limitation Act, XII of 1112, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that on award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Cochin Limitation Act XII of 1112 for the commencement of the proceedings (including arbitration) with respect to the difference referred.

38. *Disputes as to arbitrator's remuneration or costs.*—(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbirtrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

CHAPTER VI

Appeals

39. *Appealable orders.*—(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order;

An order:—

(*i*) superseding an arbitration;

(*ii*) on an award stated in the form of a special case;

(*iii*) modifying or correcting an award;

(*iv*) filing or refusing to file an arbitration agreement;

(*v*) staying or refusing to stay legal proceedings where there is an arbitration agreement;

(*vi*) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section.

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CHAPTER VII

Miscellaneous

40. *Court of Small Causes not to have jurisdiction over arbitrations save arbitrations in suits before it.*—Court of Small Causes shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under section 21.

41. *Procedure and powers of Court.*—Subject to the provisions of this Act and of rules made thereunder—

(*a*) the provisions of the Code of Civil Procedure XXIX of 1111 shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(*b*) the Court shall have, for the purpose of, and in relation to, arbitration proceedings; the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (*b*) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

42. *Service of notice by party or arbitrator.*—Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either

(*a*) by delivering it to the person on whom it is to be served, or

(*b*) by sending it by registered post in a letter addressed to that person at his usual or last known place of abode or business in Cochin State.

43. *Power of Court to issue processes for appearance before arbitrator.*—(1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty or any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

44. *Power to High Court to make rules.*—The High Court may make rules consistent with this Act as to—

(*a*) the filing of awards and all proceedings consequent thereon or incidental thereto;

(*b*) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention of an arbitration agreement;

(*d*) the forms to be used for the purposes of this Act;

(*e*) generally, all proceedings in Court under this Act;

45. *Government to be bound.*— The provisions of this Act, shall be binding on the Government.

46. *Application of Act to statutory arbitrations.*— The provisions of this Act, except sub-section (1) of section 6 and sections 7, 12 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment where an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

47. *Act to apply to all arbitrations.*— Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

48. *Saving for pending references.*— The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, not withstanding any repeal effected this by Act, continue to apply.

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49. *Repeals and amendments.*— (1) The enactments specified in the Third Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

(2) The enactment specified in the Fourth Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

FIRST SCHEDULE

(See section 3)

Implied conditions of Arbitration agreements

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deed, papers, accounts, writings and documents within their possession of power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

THE SECOND SCHEDULE

[*See section (41)*]

Powers of Court

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, peservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference; or authorising any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full informatien or evidence.

4. Interim injunctions or the appointment of a receiver.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

THE THIRD SCHEDULE

[*See section 49(1)*]

Enactments Repealed

Year	*No.*	*Short title*	*Extent of Repeal*
1	2	3	4
1108	V	The Cochin Arbitration Act V of 1108	The whole
1111	XXIX	The Code of Civil Procedure	Section 74 and clauses (*a*) to (*f*) both inclusive of sub-section (1) of section 88

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THE FOURTH SCHEDULE

[See section 49(2)]

Year 1	*No.* 2	*Short title* 3	*Amendments* 4
1097	IV	The Cochin Specific Relief Act	In section 21— (*i*) For the words and figures "Code of Civil Procedure and the Cochin Arbitration Act V of 1108", the words and figures "the Cochin Arbitration Act, of 112 ", shall be substituted. (*ii*) After the words "but if any person who has made such a contract", the words "other than an arbitration agreement to which the provisions of the said Act apply" shall be inserted.
1112	XII	The Cochin Limitation Act	In the First Schedule— (*i*) For Article 145 the following shall be substituted, namely.— "145. Under the Cochin Arbitration Act of 112 , to set aside an award or to get an award remitted for consideration. — Thirty days — The date of service of the notice of filing of the award" (*ii*) In Article 146, for the words "same Code" in the first column, the words and figure "Code of Civil Procedure, XXIX of 1111" shall be substituted. (*iii*) For Article 162 the following shall be substituted namely.— "162 Under the Cochin Arbitration Act, of 112 , for the filing in Court of an award — Ninty days — The date of service of the notice of the making of the award"

Objects and Reasons

The Cochin Arbitration Act, V of 1108, is based on Act, IX of 1899 of the Indian Legislature. In British India the law relating to Arbitration has been substantially changed on the recommendation of the Civil Justice Committee. It is considered necessary to bring our law relating to Arbitration in line with the Indian Arbitration Act, X of 1940. Hence the Bill.

APPENDIX VI

THE COCHIN MUNICIPAL ACT (AMENDMENT) BILL

Whereas it is necessary further to amend the Cochin Municipal Act, XVIII of 1113; it is hereby enacted as follows.—

1. This Act may be called the Cochin Municipal (Amendment) Act, of 112 and shall come into force at once.

2. For sub-section (1) of section 13 of the Cochin Municipal Act, XVIII of 1113, the following shall be substituted, namely,—

"(1) A Commissioner shall be appointed by Government in the case of each Municipality whose annual income is above seventy-five thousand rupees and in the case of any other Municipality notified by Government in this behalf. Every notification issued under this sub-section shall specify the reasons therefor".

Statement of Objects and Reasons

Section 13 of the Cochin Municipal Act empowers Government to appoint Commissioners only in Municipalities which have an income above Rs. 75,000. Government consider that they should have power to appoint Commissioners when in their opinion such appointment is necessary for the efficient conduct of Municipal affairs and that the existing restriction should be removed. Hence the Bill.

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